

A RESOLUTION

BY PUBLIC SAFETY & LEGAL ADMINISTRATION COMMITTEE

A RESOLUTION AUTHORIZING THE SETTLEMENT OF THE CLAIM OF FCS CONSTRUCTION SERVICES, INC. IN THE AMOUNT OF 76,882.00 AGAINST THE CITY OF ATLANTA

03-R-0889

WHEREAS, the Harris House Renovation was a project that was funded under the City's CDBG and HOME programs for the purpose of housing homeless veterans; and

WHEREAS, Veterans Opportunity and Resource Center (VORCI), a non-profit corporation, was the sponsor agency for the Harris House Renovation project; and

WHEREAS, HUD approved a pass through grant of approximately 1.8 million dollars for VORCI; and

WHEREAS, the City of Atlanta, on behalf of VORCI, administered the RFP and the selection process for a contractor to rehabilitate Harris House; and

WHEREAS, FCS CONSTRUCTION SERVICES, INC. won the bid for the construction of the project and the Atlanta City Council authorized the execution of Contract FC-7140-99; and

WHEREAS, an audit of VORCI was conducted by HUD, prior to the City's execution of said contract, which contained findings that were serious enough, in the opinion of the Chief Financial Officer, to threaten the viability of VORCI; and

WHEREAS, Contract FC-7140-99 between FCS CONSTRUCTION SERVICES, INC. and the City was never executed; and

WHEREAS, FCS CONSTRUCTION SERVICES, INC. has filed a claim against the City of Atlanta seeking damages that resulted from the City's non-execution of Contract FC-7140-99; and

WHEREAS, the damages to FCS CONSTRUCTION SERVICES, INC. occurred when the company incurred substantial costs including Bid Preparation, Builder's Risk Insurance Premiums, Project Management, Labor Burden and other preparatory expenses associated with the undertaking of the Harris House project; and

WHEREAS, the facts disclosed indicate that said claim is based on HUD and City guidelines as they relate to normal bid provisions with regard to allowable cost recoverable on contracts cancelled during the execution process; and

WHEREAS, under HUD funding guidelines, Builder's Risk Insurance Premium in the amount of \$6,772.00 and Labor Burden in the amount of \$8,486.00 are documented costs totaling \$15,258.00 and are allowable for reimbursement from HUD on contracts cancelled during the execution process; and

WHEREAS, the HUD funding of \$15,258.00 has already been appropriated through the Twenty-Fifth Year Community Development Block Grant Program; and

WHEREAS, under the City's normal bid provisions, Bid Preparation of \$7,250.00, Project Management of \$32,638.00, Office Overhead of \$7,618.00 and Profit (10%) of \$14,118.00 are regarded as allowable costs totaling \$61,624.00 and are recoverable on contracts cancelled during the execution process; and

WHEREAS, the claimant has asserted damages in the amount of \$80,333.00 and has agreed to accept \$76,882.00 in full and complete satisfaction and settlement of its claim against the City of Atlanta; and

WHEREAS, it is the opinion of the City Attorney that FCS CONSTRUCTION SERVICES, INC.'s claim is legitimate, reasonable and it is in the best interest of the City to resolve the claim and, hereby, recommends that the claim be settled for the sum of \$76,882.00.

THEREFORE, BE IT RESOLVED that the Council of the City of Atlanta, Georgia that \$76,882.00 be paid by the City of Atlanta to FCS CONSTRUCTION SERVICES, INC. in satisfaction of any and all claims it may have stemming from damages sustained on or about November 4, 2002, at 55 Trinity Street, SW, and that the City Attorney prepare appropriate releases.

BE IT FURTHER RESOLVED that the Chief Financial Officer is hereby authorized to pay \$15,258.00 of the above mentioned sum from Grant Fund account number 1B01 Y53P1089A59A 72**** and \$61,624 .00 of the above mentioned sum from General Fund account number 1A01/529017/T31001.

DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY

Claim No. 02L0847

Date: May 14, 2003

Claimant /Victim FCS CONSTRUCTION SERVICES, INC.
BY: (Atty) (Ins. Co.) _____
Address: 5135 Berry Street, Covington, Georgia 30014
Subrogation: Claim for Property damage \$ 80,333.00 Bodily Injury \$ _____
Date of Notice: 11/20/02 Method: Written, Proper X Improper _____
Conforms to Notice: O.C.G.A. §36-33-5 X Ante Litem (6 Mo.) X
Date of Occurrence 11/4/02 Place: 55 Trinity Street, SW
Department PROCUREMENT Division _____
Employee involved _____ Disciplinary Action: _____

NATURE OF CLAIM: Claimant sustained damage when the City terminated its contract to perform work on the Harris House Veterans Rehabilitation Contract. An investigation revealed that the project had been approved by HUD for funding. However, HUD conducted an audit of the project and determined that the seriousness of its findings threatened the viability of the project. Accordingly, it was deemed to be in the best interest of the City not to execute the contract. However, the costs that the Claimant incurred to perform said contract were legitimate and reimbursable.


INVESTIGATION:

Statements: City employee X Claimant _____ Others _____ Written _____ Oral X
Pictures _____ Diagrams _____ Reports: Police _____ Dept Report X Other _____
Traffic citations issued: City Driver _____ Claimant Driver _____
Citation disposition: City Driver _____ Claimant Driver _____

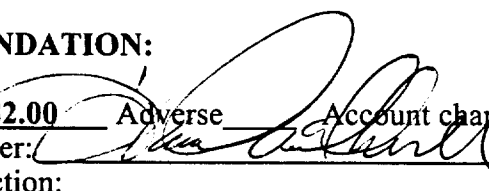
BASIS OF RECOMMENDATION:

Function: Governmental X Ministerial _____
Improper Notice _____ More than Six Months _____ Other _____ Damages reasonable _____
City not involved _____ Offer rejected _____ Compromise settlement X
Repair/replacement by Ins. Co. _____ Repair/replacement by City Forces _____
Claimant Negligent _____ City Negligent X Joint _____ Claim Abandoned _____

Respectfully submitted,


INVESTIGATOR GWENDOLYN BURNS

RECOMMENDATION:

Pay \$ 76,882.00 Adverse _____ Account charged: 1A01 X 2P01 _____ 2J01 _____ 2H01 _____
Claims Manager:  Concur/date 05-29-03
Committee Action: _____ Council Action _____



FCS CONSTRUCTION SERVICES, INC.

Finance
Burns
11/20/02

5135 BERRY STREET • COVINGTON, GEORGIA 30014

(770) 385-7600 • FAX (770) 385-0085

VIA HAND DELIVERY AND
CERTIFIED MAIL – RETURN RECEIPT REQUESTED
7099 3400 0010 9843 0892

ENTERED - 11-21-02 - SB
02L0847 - GWEN BURNS

October 29, 2002

Ms. Jocelyn Ross
Director
Branch Management
55 Trinity Ave., S.W.
Atlanta, GA 30335

**RE: FC-7140-99, Harris House Veterans Rehabilitation Project: Notice of Claim
Under Contract Provision GC-23.3 and Special Conditions Paragraph 4C**

Dear Ms. Ross:

FCS Construction Services, Inc. hereby files a Notice of Claim pursuant to the above referenced contract due to an apparent termination of the contract for the convenience of the City of Atlanta.

As you are aware, FCS has incurred substantial costs as it pertains to this project. FCS is requesting reimbursement for the costs incurred in relation to this project as set forth below:

Bid Preparation and Buyout	\$11,000.00
Builder's Risk Insurance Premiums	6,400.00
Subtotal	\$17,400.00
Project Management	\$37,655.00
Labor Burden (26%)	9,790.00
Subtotal	\$47,445.00
Subtotal	\$64,845.00
Office Overhead (10%)	6,485.00
Subtotal	\$71,330.00
Profit (10%)	7,133.00
Total	\$78,463.00

Attached hereto is documentation supporting the above referenced claim.



Pursuant to General Condition 46, attached hereto is a sworn statement.

Your prompt consideration in this matter is greatly appreciated.

If you have any questions, please call me at (770) 385-7600.

Sincerely,

A handwritten signature in black ink, appearing to read 'FJ Benton', is written over the typed name. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Frederick J. Benton
President

FCS Construction Services, Inc.

CC: Bernard Thomas, Attorney
Phillip Smith, Director of Housing
Felicia Strong-Whitaker, Director, Bureau of Purchasing & Real Estate
Ronald Rocquemoire, Contracting Officer